



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 2, 2015

Ruth Z. Brown
312 N. May Street, Suite 100
Chicago, IL 60618

Re: Formal Complaint 15-FC-239; Alleged Violation of the Access to Public Records Act by the City of Indianapolis and the Indianapolis Metropolitan Police Department

Dear Ms. Brown,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis and the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* IMPD responded via Justin Paicely. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 19, 2015.

BACKGROUND

Your complaint dated August 18, 2015 alleges that IMPD violated the Access to Public Records Act by failing to provide the records you requested.

On June 23, 2015 you requested all video and audio recordings related to a police action shooting on January 15, 2015. On July 28, the Department denied your request, citing the investigatory materials exemption under the APRA. You contend that this is improper.

On September 4, the City responded. Mr. Paicely reiterated the investigatory exemption and stated that the incident in question is still under investigation.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Indianapolis Metropolitan Police Department is a public agency for



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the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy IMPD's disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The issue of body-worn cameras has been addressed by this Office in Opinion of the Public Access Counselor 15-FC-158. That Opinion is hereby incorporated by reference.

The APRA sets forth several exceptions to disclosure. One of the instances when the release of records is discretionary is when information is compiled in the course of a criminal investigation. See Ind. Code § 5-14- 3-4(b)(1). Ind. Code § 5-14- 3-2 (i) defines investigatory records as information compiled in the course of the investigation of a crime.

The investigatory records exception is indeed broad and captures material collected or compiled during the course of a criminal investigation. It is important to note this applies to pre-existing public records which would normally be subject to disclosure but for the criminal investigation. The records you describe are clearly related to the criminal investigation.¹

That said, police action shootings fall squarely within the public interest. While I disagree that the public has an affirmative constitutional right to view footage, the disclosure of certain law enforcement records fosters accountability and trust with the public. There are strong policy reasons to allow the public to scrutinize the actions of government agencies, including (perhaps especially) law enforcement. If a police agency avails itself of body-worn recording devices, then it also avails those recordings to public access when appropriate. Nevertheless, I have stated on several occasions that law enforcement agencies should release investigatory information upon request only if it would not compromise public safety, the integrity of an ongoing investigation, or an individual's legitimate expectation of privacy.

There have been instances when an individual with a compelling interest in a case has been afforded the opportunity to view and inspect footage as opposed to receiving a copy. I have no way of knowing whether this is a valid compromise under the circumstances; however, IMPD may want to take this suggestion under advisement.

¹ You appear to take exception to the manner of denial pursuant to Ind. Code § 5-14-3-9(d), however, the denial of July 28, 2015 appears to be in order.



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As stated in 15-FC-158, the Indiana General Assembly is exploring the body camera footage issue in regard to public access this summer. It is my understanding that the recommendations and conclusions of the study committee considering the issue may find its way into proposed legislation. I have confidence that the legislature is giving thoughtful and meaningful consideration to the matter. Until any legislative change is made, any recorded footage that is compiled in the course of an investigation of a crime falls under Ind. Code § 5-14-3-4(b)(8) and may be withheld at law enforcement's discretion. The caveat from this Office is that law enforcement exercise its discretion judiciously and in good faith.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Indianapolis Metropolitan Police Department has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Justin Paicely, Esq.